

STATE OF MICHIGAN  
COURT OF APPEALS

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*In re* J. T. JONES, Minor.

UNPUBLISHED  
October 13, 2016

Nos. 331590; 331591  
Wayne Circuit Court  
Family Division  
LC No. 13-514528-NA

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Before: SAAD, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Respondent-mother (Docket No. 331590), and respondent-father (Docket No. 331591), appeal by right the trial court's February 2016 order terminating their parental rights to their second child. Because we conclude that the trial court did not clearly err when it found that the Department of Health and Human Services proved at least one statutory ground for termination by clear and convincing evidence and did not clearly err when it found that termination was in the child's best interests as to both parents, we affirm in both appeals.

I. BASIC FACTS

Respondents are the natural parents of two children; the child at issue in this appeal is respondents' second child together. The Department removed the older child from respondents' care in October 2013 after it was discovered that he had been severely abused and neglected. The Department established a treatment plan and offered services to both respondents. While the proceedings involving the older child were still pending, respondent-mother gave birth to the child at issue here. The Department immediately removed him from respondents' care. Although the case involving the older child proceeded to termination, the trial court ordered the Department to continue providing services to respondents in the hope that they might be reunified with the younger child.

In June 2015, the trial court terminated the parental rights of both respondents to the older child. Respondent-mother appealed that decision, but respondent-father did not. This Court later affirmed the trial court's June 2015 order terminating respondent-mother's parental rights to the older child. See *In re J T Jones, Minor*, unpublished opinion per curiam of the Court of Appeals, issued April 28, 2016 (Docket No. 328300).

In July 2015, the Department filed a separate supplemental petition to terminate respondents' parental rights to their younger child. After hearings held in November 2015 and February 2016, the trial court entered a separate order terminating respondents' parental rights to their younger child in February 2016.

Both respondents then appealed in this Court.

## II. SCOPE OF APPEAL

On appeal, respondent-father challenges the trial court's termination of his parental rights to both children. As this Court recognized in respondent-mother's appeal of the order terminating her parental rights to the older child, "[t]he circuit court also terminated father's parental rights; he has not appealed the court's order." *In re T J Jones*, unpub op at 2 n 2. The present appeal involves the trial court's order of February 2016, which terminated respondent-father's parental rights to the younger child. Therefore, respondent-father may not rely on that claim of appeal to challenge the trial court's June 2015 order terminating his parental rights to the older child.

In addition, respondent-father's claim of appeal cannot be amended or treated as a late appeal of the trial court's June 2015 order because any appeal from that order would be untimely. Respondent-father had to appeal by right within 14 days of that order, MCR 7.204(A)(1)(c), which he did not do. Moreover, the time for filing a delayed or late appeal from that order has also expired. See MCR 3.993(C)(2); MCR 7.205(G)(6). Consequently, this Court does not have jurisdiction to review the trial court's June 2015 order terminating respondent-father's parental rights to his older child. See *In re Waite*, 188 Mich App 189, 197; 468 NW2d 912 (1991).

## III. TERMINATION OF PARENTAL RIGHTS

### A. STANDARD OF REVIEW

Both respondents argue that the trial court erred when it found that the Department proved a statutory ground for termination by clear and convincing evidence and erred when it found that termination was in the child's best interests. We review for clear error both the trial court's finding that the Department proved a statutory ground for termination and that termination was in the child's best interests. MCR 3.977(K); *In re Gonzales/Martinez*, 310 Mich App 426, 430-431; 871 NW2d 868 (2015).

### B. RESPONDENT-MOTHER'S APPEAL

Initially, we note that the parties disagree about the statutory grounds that the trial court found to support the termination of respondent-mother's parental rights. However, the parties agree that the trial court found that the Department proved grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j). Therefore, we shall first consider whether the trial court clearly erred when it found that the Department had proved at least one of those grounds.

## 1. STATUTORY GROUNDS

The trial court may terminate a parent's parental rights under MCL 712A.19b(3)(c)(i) if he or she "was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court," finds that the "conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age." The trial court may terminate a parent's parental rights under MCL 712A.19b(3)(g) if the "parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." Finally, the trial court may terminate a parent's parental rights under MCL 712A.19b(3)(j) if there "is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent." There was clear and convincing evidence to support the trial court's findings as to each of these grounds.

Respondent-mother had participated in services for more than two years, but had made little progress toward becoming able to provide a safe and stable home for her younger child on her own. While her lack of furnishings and a regular income were apparent, those were not the reasons cited by the court when it terminated her parental rights. The court instead focused on her reluctance to address the severe abuse and neglect that her older child had experienced (that is, his thrush, yeast infection, the condition of his eyes, and diaper rash, in addition to the many fractures in various stages of healing that she apparently never noticed or investigated). In addition, respondent-mother did not have an adequate support system available to help her care for the child, making it likely that he too would be abused or neglected if returned to her custody. A parent's failure to complete the requirements of a parent-agency agreement is evidence of the parent's failure and inability to provide proper care and custody for the child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Considering respondent-mother's failure to adequately rectify the conditions that led to the child's removal from her care despite her participation in services for more than two years, the trial court did not clearly err in finding that § 19b(3)(c)(i) had been established by clear and convincing evidence.

The trial court's findings that respondent-mother had not rectified the conditions leading to the child's removal also support its decision to terminate her parental rights under §§ 19b(3)(g) and (j). Given respondent-mother's failure to complete the requirements of her treatment plan after more than two years, there was no reasonable expectation that she would be able to provide proper care and custody to her younger child within a reasonable time. Similarly, her reluctance to address the severe abuse and neglect that her older child had experienced and failure to successfully complete her treatment plan support the trial court's determination that there was a reasonable likelihood that the younger child would be harmed if returned to respondent-mother's home. Accordingly, the trial court did not clearly err in terminating respondent-mother's parental rights under §§ 19b(3)(g) and (j). And, because the Department need only establish one ground for termination, see *In re Gonzales/Martinez*, 310 Mich App at 431, we need not consider whether termination was appropriate under any other ground.

## 2. BEST INTERESTS

Respondent-mother also argues that termination of her parental rights was not in her younger child's best interests. In order to terminate respondent-mother's parental rights to the child, the trial court had to find by a preponderance of the evidence that termination was in the child's best interest. See *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). In deciding whether termination of parental rights is in a child's best interests, the court may consider the child's bond to the parent, the parent's parenting abilities, and the child's need for permanency, stability, and finality. *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012). The court may also consider the advantages of an alternative placement for the children. *In re Foster*, 285 Mich App 630, 634-635; 776 NW2d 415 (2009).

The child at issue in this appeal had spent his entire life in foster care. Although respondent-mother appeared to have a bond with him, that bond did not overcome his need for permanence and stability in a safe and suitable home, free of abuse and neglect. Despite receiving services for more than two years, respondent-mother failed to make adequate progress in demonstrating that she could provide a safe and stable home for the child on her own. She visited the child, but she never progressed to unsupervised visits outside the agency's offices. The child had lived in a safe and stable home with his foster parent, which had essentially been the only home the child had known. On this record, we cannot conclude that the trial court clearly erred when it found that termination of respondent-mother's parental rights was in the child's best interests.

### C. RESPONDENT-FATHER'S APPEAL

#### 1. STATUTORY GROUNDS

As to respondent-father, the referee's written report and recommendation shows that the referee found grounds to terminate his parental rights under §§ 19b(3)(a)(ii), (c)(i), (g), (j), and (k)(iii). A trial court may terminate a parent's parental rights under MCL 712A.19b(3)(a)(ii), if it finds that the "child's parent has deserted the child for 91 or more days and has not sought custody of the child during that period." The trial court found that respondent-father abandoned his younger child on the evidence that he did not visit him after June 2015, which is when the trial court terminated his parental rights to the older child. The evidence showed that after that date, respondent-father did not visit his younger child until shortly before Christmas in 2015. He also failed to participate in services or maintain contact with his caseworker during this period. This evidence supports the trial court's finding that respondent-father deserted the child for 91 or more days and did not seek custody of the child during that period. Thus, the trial court did not clearly err in finding that termination of respondent-father's parental rights was warranted under § 19b(3)(a)(ii).

The evidence also supports termination of respondent-father's parental rights under §§ 19b(3)(c)(i), (g), and (j). Respondent-father did not have his own housing and would not allow the caseworker full access to the home where he was living. The portion of the house observed by the caseworker was not suitable for a child. Respondent-father also did not provide verification of his employment. He further failed to participate in drug testing, and the limited test results that were obtained were positive for marijuana. He did not participate in substance

abuse therapy or complete individual therapy. He only visited the child twice during the preceding year. Although he completed a psychological evaluation, he was terminated from all other services due to his lack of participation.

In sum, respondent-father never rectified any of the conditions that caused the child at issue to be placed in foster care, and considering his complete failure to participate in required services, there was no reasonable expectation that he would be able to rectify those conditions or be in a position to provide a proper home for the child within a reasonable period of time. Considering the severe abuse and neglect that his older child experienced and respondent-father's failure to participate in rehabilitative services, there was a reasonable likelihood that the younger child would be harmed if returned to respondent-father's home. Contrary to what respondent-father argues, he was afforded more than adequate time to work on the goals of his treatment plan; he just refused to participate. The trial court did not clearly err in finding that termination of respondent-father's parental rights was justified under §§ 19b(3)(c)(i), (g), and (j).

Because the Department only had to establish one ground for termination, see *In re Gonzales/Martinez*, 310 Mich App at 431, even if we were to conclude that the trial court erred when it found an additional ground for termination, that error would not warrant relief.

## 2. BEST INTERESTS

Respondent-father also argues that the trial court erred in finding that termination of his parental rights was in the child's best interests. The court found that, although respondent-father loved the child, he had never been a consistent factor in the child's life. Respondent-father had visited him just twice in the past year, and just once after June 2015. In addition, respondent-father made virtually no effort to participate in reunification services. On this record, the trial court did not clearly err in finding that termination of respondent-father's parental rights was in the child's best interests.

There were no errors warranting relief.

Affirmed in both dockets.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Michael J. Kelly